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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 229

ELIZABETH WRIGHT AND CHARLES C. WRIGHT,
Petitioners,

vs.

GUSTA LOGAN, HARRIET LOGAN SAWYER AND EXIA LOGAN REESE,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

CERTIORARI GRANTED OCTOBER 15, 1941.

BRIEF ON BEHALF OF THE RESPONDENTS.

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Certiorari granted October 15, 1941.

BRIEF ON BEHALF OF THE RESPONDENTS.

OPINIONS DELIVERED IN COURTS BELOW.

In the District Court.

The opinions of the District Court for the Eastern District of Illinois are not officially reported but are found in the Record at pages 36-40; 41; 44 and 48.

Opinion of the Circuit Court of Appeals.

The opinion of the Circuit Court of Appeals for the Seventh Circuit is reported as *In Re Wright* (*Wright, et al.* v. *Logan, et al.*), 119 F. 2d. 354. This opinion is contained in the Record at pages 68 to 71.

Jurisdiction.

Petitioners invoked the jurisdiction of this Court under Sub-section 240 (a) of the Judicial Code; 28 U. S. C. 347 (a), and certiorari was granted by this Court on October 15, 1941.

Statement of the Case.

This case presents a question of law as to whether or not a Bankruptcy Court has jurisdiction under Section 75 of the Bankruptcy Act where, before filing his original petition in bankruptcy, the farmer-debtor has

(a) Permitted his equity of redemption to expire after a foreclosure suit in a State Court without making redemption (R. 36; 38, last paragraph).

(b) Flouted and disregarded the order of the District Court to file his petition under Sub-Section (S) within ten days and let five years expire before so doing (R. 19; 47).

(c) Expressly agreed in open court to pay into the Court the fixed value of the premises or surrender possession thereof within a specified time and then disregarded his agreement and, after expiration of the time fixed, filed a petition for extension (R. 48; 47).

The Facts.

Respondents deem it necessary to make an additional statement of the facts for a proper understanding of the facts involved and issues presented.

The petitioners had a decree of foreclosure entered

against them in the Circuit Court of Edgar County, Illinois, December 17, 1932 (R. 26; 36.) The premises involved, forty acres of land, were sold under this decree on February 3, 1933, and purchased by W. S. Logan, the mortgagee for $3,801.52, leaving a deficiency of $300. A certificate of purchase was issued and delivered to the purchaser by the Master in Chancery on the day of sale (R. 27; 36). Under the Illinois Statute, (Illinois Revised Statutes of 1939, Chapter 77, Paragraph 18), the petitioners, defendants in that foreclosure suit, were given twelve months from the date of the sale in which to redeem the real estate so sold. Petitioners made no redemption (R. 36).

Three months after the expiration of their period of redemption, namely, on May 3, 1934, petitioners filed their petition under Section 74 of the Bankruptcy Act (R. 2). The cause was referred to the Referee in Bankruptcy who after a hearing entered an order denying the petition for the reason that the petitioners, having permitted the redemption period to expire, there was no contractual relation of petitioner and creditor between them and the former mortgagee, and because the petition was not filed within the time contemplated by the Statute (R. 27).

On August 30, 1934 the District Court entered an order approving and confirming the order of the Referee (R. 2; 28). Petitioners appealed to the Circuit Court of Appeals for the Seventh Circuit and the judgment of the District Court was affirmed and rehearing denied, *Wright* v. *Logan*, 75 F. (2d) 687.

A week subsequent to the filing of the mandate, petitioners filed an amended petition under Section 75 of the Bankruptcy Act asking for an extension of time. Thereafter petitioners filed a suit in equity in the Circuit Court of Edgar County, Illinois, alleging they had a verbal agreement for an extension of the period of redemption and praying for a decree so extending such period. This bill

was dismissed for want of equity and appealed to the Appellate Court (*Wright* v. *Logan*, 288 Ill. App. 481). That Court held a reasonable time should be given petitioners to redeem on the theory that mortgagee had made a verbal agreement to this effect. Under the Illinois Statutes, Chapter 110, Paragraph 212, it is provided no new trial shall be had by reason of the reversal of any judgment, order or decree unless the mandate is filed in the trial court within one year after final determination by the reviewing court. Petitioners did not comply with this statutory provision and have never filed the mandate of the Illinois Appellate Court. The right to obtain the extension to the period of redemption to be fixed by the trial court lapsed upon petitioners' failure to file such mandate (R. 29). By reason of the failure to file such mandate, the decision of the Circuit Court of Edgar County to the effect that the petitioners had no extension of the period to redeem, is in full force and effect.

On May 16, 1935, the Conciliation Commissioner referred to the court a motion filed by the mortgagee asking that the proceeding in bankruptcy be dismissed (R. 18). On hearing, the court entered an order dissolving the injunction entered in said cause. Petitioners prayed an appeal and the court fixed the amount of appeal bond at $200. This appeal was never prosecuted (R. 17; 3).

Subsequent to the dissolution of the injunction, mortgagee secured Master's Deed.

The petitioners informed the Conciliation Commissioner before whom the case was pending that they were not proceeding under Frazier-Lemke Act, and therefore were not affected by its defeat as unconstitutional, whereupon, the Conciliation Commissioner filed his final report and returned to the Court all schedules and claims (R. 18).

On September 30, 1935, the District Judge entered an order upon the petitioners giving them leave to amend

their petition to include a prayer for adjudication under new Sub-Section (S) of Paragraph 75 of the Bankruptcy Act as amended within ten days and that in the absence of such amendment said petitioners show cause why the original petition should not be dismissed (R. 19). Petitioners did not file a petition to be adjudicated under Sub-Section (S), but did on October 9, 1935 file a petition asking that they be given the right to avail themselves of a composition with their creditors for an extension of time (R. 19). The case was reinstated under Section 75 and referred to the Conciliation Commissioner of Edgar County (R. 22). On petition of petitioners the matter was referred to the Conciliation Commissioner of Champaign County, Illinois (R. 24, 25, 3). On February 29, 1936 petitioners filed a petition for an order restraining any person from obtaining a writ of restitution. Hearing on this petition was set for March 7, 1936, but petitioners did not appear and no hearing had ever been had on that petition (R. 3, 29).

On January 4, 1939 respondents filed a petition asking for a report of the Conciliation Commissioner on the proceeding and that thereafter they be allowed to obtain possession of the real estate or in the alternative, that the Court determine the amount due under the foreclosure decree and fix a reasonable time for appellant to pay that amount (R. 26). Upon hearing March 11, 1939 the Court continued the petition for 120 days directing the petitioners to redeem the property within that time for the amount agreed upon by the parties or complete rehabilitation within the terms of the act. The Court fixed the time of 120 days because that corresponded to the time it would take to effect a sale if one were necessary plus the 90 days permitted the petitioners for redemption and directing, if rehabilitation was not completed within the time given, that full effect be given to the deed held by respondents (R. 39).

On January 12, 1940 upon a showing that debtors had neither redeemed nor rehabilitated, the Court ordered them to surrender possession of the premises on or before March 1st or pay into the Court $5,560.72 for respondents (R. 44). This extended time was given on the promise of petitioners made in open Court that they would voluntarily surrender title and possession if they were permitted to remain on the premises until March 1st (R. 48). Petitioners did not comply with that order and promise to the Court and neither paid nor surrendered possession. However, subsequent to the expiration of the time fixed by the Court and on March 2, 1940 petitioners filed with the Conciliation Commissioner a rehabilitation scheme offering to pay to respondents the sum of $1,000 but making no offer or provision for paying any more than that sum (R. 45, 46). On the same date, March 2, 1940 (almost five years after the Court ordered them to do so) petitioners tendered their petition to amend the petition pursuant to the provisions of Section 75-S (R. 47). Three days later the District Court entered an order dismissing this petition (R. 48) which order was affirmed by the Court of Appeals.

Comments on Certain Statements in Petitioners' Statement of the Case.

In petitioners' statement of the case on page 3, paragraph 6, the implication is apparent that petitioners filed their petition under Sub-Section 75 in a proper and lawful manner. When the facts are fully considered we discover that on September 30, 1935 the District Court entered an order granting leave to petitioners to amend their petition to include a prayer for adjudication under Sub-Section (S) of 75 of the Bankruptcy Act as amended within ten days of the date of said order and that the petition mentioned in said paragraph was filed with an entire disregard of the Court's order.

In petitioners' statement of the case on page 3, paragraph 7 it is stated that the Appellate Court of Illinois decided that the petitioners had a contract extending the right of redemption. The fact is that the Appellate Court of Illinois did not fix any particular time within which redemption might be made, but referred that matter back to the Circuit Court. The language of the Appellate Court found in the case of *Wright* v. *Logan*, 288 Ill. App. 481 at page 492 is as follows:

> "The decree is therefore reversed, and the cause remanded with directions that the Court ascertain the amount due from the plaintiffs to the defendant; that the plaintiffs be permitted to redeem within a reasonable time to be fixed by the Court, and that upon payment thereof, the deed from the Master in Chancery conveying the premises described in the decree of foreclosure to the defendant be cancelled, and that the defendant Logan, be required upon such redemption to reconvey by a proper deed to Elizabeth Wright, the title acquired by him to the property through said Master's Deed and Certificate."

Petitioners never availed themselves of that decision but wholly failed to file the mandate in the Circuit Court of Edgar County at any time. Under the Illinois Statute the decree of the Circuit Court of Edgar County dismissing their bill for want of equity is still in full force and effect.

In petitioners' statement of the case, page 4, paragraph 8 the inference is that the petitioners' submittal of a proposition for compromise was filed soon after the decision in the Appellate Court of Illinois. The decision of the Appellate Court was dated January 15, 1937. The proposal of the petitioners for compromise was not filed until March 2, 1940 (R. 45).

In petitioners' statement of the case, page 4, paragraph 9, it is stated that the Conciliation Commissioner reported funds were in sight, with other available funds, sufficient to pay off the Logan mortgage. The report of the Commis-

sioner is based solely upon hearsay evidence and statements made to him by third parties and his belief (R. 43).

The statement is made in this same paragraph by petitioners that there was more than enough money to pay the Logan mortgage, but Logan refused to sign the necessary papers and they refer to Record page 21. We call to the attention of the Court that this statement appears only in the amended debtors' petition filed by the petitioners which was not verified and there is no evidence in the record to support that statement. It is stated in paragraph 10 of the statement of the petitioners on page 4 that the farmer-debtors paid rent. The Court found to the contrary. The District Court in his opinion of March 11, 1939 said:

> "The receiver of the State Court collected rent from the debtors for a time, but for the last four years no substantial amounts have been paid to the mortgagee, the Conciliation Commissioner or others by way of rent as required by the Frazier-Lemke Act." (R. 37.)

We will comment in our argument upon the validity of the Master's Deed to Logan, but here call to the attention of the Court that in petitioners' statement on page 5 in a footnote there is given what purports to be a copy of the Trial Court's order and decision of March 11, 1939. Essential parts of that order are omitted. For the convenience of the Court we attach an appendix to this brief setting forth in full the order of said Court which is found in the Record at pages 36 to 40.

Statement of petitioners on page 6, paragraph 13 would lead one to believe that the Court compelled the parties to enter into a stipulation. Such was not the case. The minutes on the docket simply show:

> "The Court directs counsel to submit to the Court any agreed statement as to the amount due at the time including deficiency judgment." (R. 4, Entry of 3-9-39.)

It will be noted that the Court did not order a stipulation or an agreement, but simply directed counsel if they could enter into an agreement as to the amount due to do so. There was no compulsion whatsoever. The stipulation filed two days later shows on its face that it was a voluntary stipulation between the parties (R. 40).

We have already indicated that the report of the Conciliation Commission (R. 41 to 43) was based upon hearsay evidence, his beliefs and conclusions. He simply thought that if Mrs. Wright could raise money she could pay off the loan. The fact is she never did raise the money.

Petitioners' statement, paragraph 16, page 7 comments upon the order of the Court upon petitioners to pay the amount of the judgment or surrender possession (R. 44). This order was entered because the petitioners on January 12, 1940 voluntarily offered to surrender title to and possession of the premises if they were allowed to remain in possession until March 1, 1940 (R. 48).

The agreement of petitioners, in default of payment, to surrender possession expired March 1, 1940. They neither paid nor gave possession, but on the following day, March 2, 1940, tendered their amended petition to proceed under Sub-Section (S) (R. 47). A hearing was had on March 4, 1940 and on March 5, 1940 the petition was dismissed (R. 48). On appeal to the Circuit Court of Appeals the judgment of the District Court was affirmed (R. 68-71).

The comments we have made apply likewise to the chronological table of events in petitioner's brief on pages 7 to 11 inclusive. To point out the errors there would be a mere repetition.

SUMMARY OF ARGUMENT.

I.

When Period of Redemption in Foreclosure Proceeding Has Expired, the Bankruptcy Court Has No Jurisdiction to Entertain Debtor's Petition Under Section 75 of the Bankruptcy Act.

II.

The Findings That Petitioners Had No Hope of Rehabilitation Were Not Necessary to the Decisions and Do Not Render Erroneous the Proper Disposition of the Issues Submitted.

III.

There Was No Equity of Redemption in Petitioners When They Filed Their Original Petition in Bankruptcy.

Failure to File Mandate of the Appellate Court in the Circuit Court of Edgar County, Illinois, Amounts to an Abandonment of That Suit and a Wiping Out or Cancellation of Any Verbal Extension of the Period of Redemption.

IV.

The Master's Deed Is Valid.

V.

The Narrow Question.

The Bankruptcy Court Did Not Keep the Proceeding Under Section 75 (a) to (r).

The Borchard and Wright Cases Compared.

VI.

Debtors Must Amend Their Petition Asking to Be Adjudged a Bankrupt Under Section 75 (s) Within a Reasonable Time After the Court Has Ordered Them to Do So.

VII.

The Decisions Below Are Not Contrary to the General Tenor of Federal Decisions.

Judicial Amendments to the Farmer-Debtor Statute.

ARGUMENT.

I.

When Period of Redemption in Foreclosure Proceeding Has Expired, the Bankruptcy Court Has No Jurisdiction to Entertain Debtors' Petition Under Section 75 of the Bankruptcy Act.

A reading of the Statute demonstrates that Congress did not intend to confer jurisdiction upon the Bankruptcy Court where debtors had permitted the right of redemption to expire. (Bankurptcy Act ¶ 75 [n]; 11 U. S. C. A. 203-N.)* It will be noted that the Congress did not subject to the jurisdiction of the Court property upon which the right of redemption had expired.

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* "The filing of a petition or answer with the clerk of the court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under this section, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, *the right or the equity of redemption where the period of redemption has not or had not expired*, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

"*In all cases where, at the time of filing the petition, the period of redemption has not or had not expired*, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section. The words 'period of redemption' wherever they occur in this section shall include any State moratorium, whether established by legislative enactment or executive proclamation, or where the period of redemption has been extended by a judicial decree. In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court."

The decisions under this Statute are uniform in holding the Court had no jurisdiction under such facts. *Buttars v. Utah Mortgage Loan Corporation*, 116 F. (2) 622 (C. C. A. 10) Certiorari Denied, 85 L. Ed. 863 is a case in point. All except sixteen days of the period of redemption had expired when on July 13, 1939 debtor filed his petition in the Federal Court. Debtor failed to work out a composition with his creditors within a reasonable time and the Court held that the automatic stay terminated on October 13, 1939 and the period of redemption of the remaining sixteen days again began to run and the period of redemption therefore expired on October 29th. The amended petition to come under Sub-Section (S) was filed November 27, 1939. The Court said:

> "In the interval, the remaining period of redemption had expired and he had no remaining interest in this property when he filed his amended petition. The property was properly stricken from the bankruptcy proceedings."

The exact question here presented was passed upon in the case of *In re Cresap*, 99 F. (2) 722. The facts there were somewhat involved but are briefly, that while a foreclosure suit was pending, the debtor filed his petition under Section 75 of the Bankruptcy Act and secured an order restraining the Special Master from carrying out the foreclosure sale. The bankrupt proceeding was dismissed on August 19, 1935, but was reinstated on October 21, 1935, and another restraining order issued enjoining the Special Master from proceeding with the sale. The debtor made no progress in attempted rehabilitation and the Court vacated the restraining order and authorized the Special Master to proceed to execute the decree by a sale of the property, but directed that the purchaser do not assign his certificate of purchase, or take a deed from the Master until further order of the Court. The Master's sale was had on March 12, 1936. On April 25, 1936, the

petitioner's proceeding was again dismissed. Under the Illinois Statute the debtor's equity of redemption expired on March 12, 1937. The creditors of the debtor had three additional months under the Illinois Statute within which to redeem, so that the deed could not be issued until June 12, 1937. Until long after the debtor's equity of redemption had expired, he had not been adjudicated a bankrupt under the provisions of Sub-Section (S) of Section 75 of the Bankruptcy Act. The debtor on June 1, 1937, filed another petition to reinstate his proceeding, which was granted by the Court, and the debtor was adjudicated under Sub-Section (S). On June 11, 1937, nearly three months after the debtor's equity of redemption had expired and only one day before the expiration of the time for the debtor's creditors to redeem, the debtor obtained from the Conciliation Commissioner an order restraining the Master in Chancery from issuing a deed pursuant to the foreclosure decree. On July 28, 1937, the purchasers at the foreclosure sale filed a motion to strike from the debtor's schedules the real estate involved, and the Court did later, after the hearing, dissolve the restraining order entered by the Conciliation Commissioner, struck the real estate in question from the debtor's schedules, and ordered a deed to the land issued to the appellees.

As to the point involved in the present case, the Court said on page 726:

> "At the time of the last reinstatement of appellant's petition for composition and extension, which also contained a prayer for adjudication, the debtor's right to redeem had expired, for almost three months, and he had nothing more than a bare legal title which was valueless so far as his rehabilitation was concerned. He had never asked for an adjudication up to that time, yet he could have done so with effect under amended Sub-Section (S) at any time during the last preceding one year and nine months. Each previous dismissal of debtor's petition was warranted because

of his failure to secure a composition and his failure to ask for an adjudication. When his petitions were dismissed the restraining orders were severally abrogated, and when he permitted his redemption period to expire after the rightful dismissal of his petition, and before he had asked for an adjudication, all hope of rehabilitation was gone under his petition for adjudication."

Near the end of the opinion, the Court said:

"He had admittedly failed to effect a composition, and he failed to ask for the benefits of Sub-Section (S) until long after he had permitted his period of redemption to expire, and after the expiration of repeated notices of the Court to exercise his option to ask for an adjudication. Thereupon, the Court made the order complained of and for the several reasons hereinbefore discussed. We think there was no error."

It will be noted that the facts in the case at bar closely parallel the facts in the case just discussed, with the exception that in the case at bar the petitioner filed no petition whatever in bankruptcy until three months after the expiration of the period of redemption, while in the case discussed, the debtor filed his petition in bankruptcy before the Master's sale. The facts in our case place us in a stronger position than was the petitioner in the case referred to.

In the case at bar, the petitioner's period of redemption expired on February 3, 1934, and they did not file a petition for adjudication under Sub-Section (S) until March 2, 1940, almost six years later, although a rule had been entered upon them to do so within ten days after September 30, 1935. The amendment to Section 75 of the Bankruptcy Act was made on August 28, 1935, and the petitioners could have filed a petition for adjudication under Sub-Section (S) any time thereafter, but did not do so until March 2, 1940.

An analogous case in *In Re Tracy*, 80 F. (2) 9 (C. C. A. 7th).

A case from another jurisdiction is *Bernards* v. *Johnson*, 103 F. (2d) 567 (C. C. A. 9th), certiorari denied, 308 U. S. 595, affirmed 86 L. Ed. 14. In that case there was a foreclosure suit and the time within which debtor might have redeemed expired on June 29, 1936. Subsequent thereto, on July 15, 1936, debtors petitioned for an order granting them possession of the property and the trial Court dismissed this petition and an appeal was taken. The Circuit Court of Appeals held that no redemption having been made the debtors had no interest in the land after the expiration of their period of redemption and that the Bankruptcy Court had no jurisdiction for that reason.

Still another jurisdiction is in accord with this rule. *Schreiner* v. *Farmers Trust Company*, 91 F. (2) 606 (C. C. A. 3), certiorari denied, 302 U. S. 686. In that case foreclosure was instituted and before the sale debtor filed a petition under Section 75 of the Bankruptcy Act. Subsequent to the time when that act was held unconstitutional the Sheriff proceeded to sell the land under the foreclosure decree. When the act was amended the debtor had his proceeding reinstated but did not file a petition at that time to be adjudicated under Sub-Section (S). The Court held that under the law of Pennsylvania the debtors had no title to the property after the Sheriff's sale and had no equity of redemption and consequently, the Bankruptcy Court had no jurisdiction over the mortgaged premises.

An Illinois case passes directly upon this question. *In Re Davis*, 22 F. Supp. 2, 3 (East. Dist. Ill.). The decree of foreclosure and sale were had in the State Court. The land was sold to the mortgagee on July 25, 1936. Under Illinois law mortgagee's period of redemption expired July 25, 1937. One month thereafter on August 25, 1937, mortgagee

filed his petition for relief under Section 75 of the Bankruptcy Act. Upon this state of facts the Court said:

> "Under the Statutes of Illinois, Smith-Hurd Illinois Statutes, Chapter 77, Paragraph 18, the debtor's equity of redemption expired after the end of twelve months from the date of sale. Consequently, at the time the debtor's petition was filed, his right to redeem had expired. Thereafter, creditors might have redeemed within three months, Smith-Hurd Illinois Statutes, Chapter 77, Paragraph 20, but at the time of the hearing before the Commissioner, that period had likewise expired, so that, under the Illinois Statutes, in the normal course of procedure, the mortgagee was entitled to receive its Master's Deed, there having been no redemption, Smith-Hurd Illinois Statutes, Chapter 77, Paragraph 31. These facts bring the case clearly within *In Re Lowman*, 7 Cir. 79 F. (2) 887, and *Wright v. Union Central Life Insurance Co.*, 7 Cir. 91 F. (2) 894. By those decisions the law of this Circuit is determined, and the parties to the litigation, as well as the Court are bound thereby. Those decisions hold substantially that the laws governing mortgages are rules of property under the State Statutes, and that where a sale has been made by the State Court in satisfaction of the mortgage, and the debtor's period of redemption has expired, the Court is without power to grant relief to the debtor."

The Circuit Court of Appeals recognizes the principle in its opinion (R. 68, 69).

The Illinois Statute as to redemption by the mortgagee provides for redemption within twelve months from the date of the sale (Ill. Rev. Statutes, Chapter 77, Paragraph 18).*

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* "Any defendant, his heirs, executors, administrators, assigns or any persons interested in the premises, through or under the defendant, may, * * * within twelve months from said sale, redeem the real estate so sold by paying to the purchaser thereof, his executors, administrators or assigns or to the Sheriff or Master in Chancery, or other officer who sold the same, or his successor in office, for the benefit of such purchaser, his executors, administrators or assigns, the sum of money for which the premises were sold or bid off, with interest thereon at the rate of six per centum per annum from the time of such sale, whereupon such sale and certificate shall be null and void."

Petitioners seek to avoid the force of the foregoing Statute and decisions by the assertion that their period of redemption had been extended by the decision of the Appellate Court of Illinois. This assertion brings forth a revealing set of incidents. This contention was presented before the Referee and also in the District Court and from an adverse ruling an appeal taken to the Circuit Court of Appeals. That Court in *Wright* v. *Logan*, 75 F. (2) 687 held that it did not appear from the evidence that such an oral agreement was in fact made. Not being satisfied with the decision of the Federal Courts appellants then adverted to the Illinois Courts. They filed a suit in the Circuit Court of Edgar County, Illinois, seeking to redeem the real estate from the mortgage foreclosure sale on the theory that the mortgagee had orally agreed to permit redemption at any time. A decree against them in the trial Court was reversed by the Appellate Court of Illinois which ruled that there was such an oral agreement and remanded the cause with directions to the trial Court to ascertain the amount due and fix a reasonable time during which mortgagee might redeem. The Illinois Statute, Chapter 110, Paragraph 212 provides:

> "No new trial shall be had by reason of the reversal of any judgment, order or decree unless the mandate shall be filed in the trial Court within one year after final determination by the reviewing Court."

Petitioners have never filed the mandate of the Appellate Court (R. 37). They have by such failure lost the benefit of that decision which was handed down on January 15, 1937. Not having complied with the Statute, the decree of the Circuit Court of Edgar County is still in effect that there was no extension of the period of redemption beyond the twelve months statutory time.

The law of Illinois is well established that after condition broken the mortgagee is, as between himself and the mortgagor, the owner of the fee and he has a right to

possession against the mortgagor, his grantee, lessee or anyone claiming under him by any right. (*Westside Trust and Savings Bank* v. *Lopoten*, 358 Ill. 631, 639; *Wolkenstein* v. *Slonim*, 355 Ill. 306, 309; *Rhorer* v. *Deatherage*, 336 Ill. 450, 454.) Not only is the mortgagee the owner of the fee after condition broken, but he may maintain ejectment against the mortgagor or the owner of the equity of redemption, with the right to possession against the mortgagor or anyone claiming under him by any right.

In the case under consideration there was a condition of the mortgage broken. A decree of foreclosure was entered which could not have been except for condition broken. Therefore, the original mortgagee upon such condition broken was the owner of the fee with the right to possession. When the petitioners permitted the right of redemption to expire they had lost all interest in the premises, and had neither title nor right to possession. It follows that the Bankruptcy Court was without jurisdiction as to the premises involved.

Not only did the petitioners permit their equity of redemption to expire before filing their original petition in bankruptcy, but they also after getting into court flouted and disregarded the order of the District Court entered on September 30, 1935 to amend their petition to include a prayer for adjudication under Sub-Section (S) of Section 75 of the Bankruptcy Act within ten days (R. 19). Such amendment was not tendered until March 2, 1940 (R. 47). We see no reason why petitioners should be allowed to disregard the orders of a court for five years, when had they followed the order of the Court, their rights would have been preserved and protected, and then complain because of their own laches. It is a common principle that one may not take advantage of his own wrong.

Another point which mitigates against petitioners is that on January 12, 1940 in open court they voluntarily agreed to pay the amount due or surrender title to and

possession of the premises by March 1, 1940 if they were allowed to remain in possession until that time (R. 48). They violated their own promise and agreement and neither paid nor surrendered possession, but after the date agreed upon, namely, March 2, 1940, tendered their amended petition (R. 47).

The essential issue in this case is that the period of redemption of petitioners had expired when they filed their original petition in bankruptcy. Under the statute involved and the decisions of all courts thus far called upon to pass upon the question, it has been unanimously held that under those circumstances the Bankruptcy Court has no jurisdiction.

II.

The Findings That Petitioners Had No Hope of Rehabilitation Were Not Necessary to the Decisions and Do Not Render Erroneous the Proper Disposition of the Issues Submitted.

Petitioners emphasize in their brief that the lower courts decided this case on the ground that there was no reasonable hope of rehabilitation and that petitioners had already enjoyed a seven year moratorium (Petitioner's Brief, pages 20-23).

It cannot be denied that the lower courts did comment upon these facts.

Neither can it be denied that these findings were not necessary to the decision of the questions submitted to the court and do not render erroneous the proper disposition of the issues submitted.

There were two additional reasons taken into consideration by the lower courts, namely:

1. That at the time petitioners filed their original petition in bankruptcy their period of redemption under a fore-

closure sale had expired three months previously. It follows that petitioners then had no right of redemption and no right, title or interest in the premises. This fact is set forth in the opinion of the Circuit Court of Appeals (R. 68 and 69), as well as in the opinion of the District Court (R. 36-37).

2. That petitioners, on September 30, 1935, were ordered by the court to amend their petition to include a prayer for adjudication under Section 75(S) of the Bankruptcy Act within ten days (R. 49) and did not comply with that order within a reasonable time, but delayed until March 2, 1940 before tendering such a petition (R. 47). This basis for its decision is discussed in the last paragraph of the decision of the Circuit Court of Appeals (R. 71).

For the convenience of the court we attach to this brief an appendix setting out the three opinions of the District Court. It may be contended that in the last decision of March 5, 1940 the District Court said nothing about the equity of redemption having expired. We point out that in said decision the District Court incorporated by reference in that opinion its orders of March 11, 1939 and January 12, 1940 (R. 48). In the opinion of March 11, 1939 the District Court rests its decision upon the fact that the petitioners had permitted the period of redemption to expire without making such redemption (R. 36-37).

The position for which we here contend as been supported by this court in its recent decision in the case of *Bernards* v. *Johnson*, 86 L. Ed. 14, 21 (Decided November 10, 1941—Case No. 2 of the October Term 1941). A brief quotation will suffice:

> "The court also found that the bankrupts had made no attempt to comply with the new Sub-Section (S) of paragraph 75; that they had, ever since the filing of their petition for adjudication on December 19, 1934, been beyond all hope of financial rehabilitation; that there was no possibility of such rehabilitation. Such findings constitute no basis either for a refusal to

adjudicate the farmer-petitioner a bankrupt under paragraph 75 (s) or for dismissing the cause instead of following the procedure outlined in the Sub-Section. In the instant case, however, these findings, though evidently directed to the relief prayed by the respondents, were not necessary to the decision of any of the questions they submitted to the court and do not render erroneous the proper disposition of the issues submitted."

That ruling applies directly and concretely to the case at issue.

III.

There Was No Equity of Redemption in Petitioners When They Filed Their Original Petition in Bankruptcy.

The right to redeem premises from a foreclosure sale can be created only in two days: (1) by operation of law or (2) by contract.

(1) In Illinois the mortgagors have an equity of redemption by law of twelve months after sale in foreclosure (Ill. Rev. Statutes, Chapter 77, paragraph 18). Foreclosure sale in this case was on February 3, 1933 (R. 27). The twelve months period of redemption expired on February 3, 1934. The original petition in bankruptcy was filed on May 3, 1934, three months after the expiration of the statutory period of redemption (R. 2—first entry). It is evident that petitioners had no statutory right of redemption when they filed their original petition. This is directly held to be the fact in *In Re Wright*, 75 F. (2) 687, 688.

(2) Petitioners claim they had a right of redemption by contract. This position is asserted in petitioners' brief, page 16 Point II.

We deny that petitioners had any right of redemption by contract.

This right was first asserted by petitioners before the

Referee. When the original petition in bankruptcy was filed on May 3, 1934 (R. 2), the matter was referred to the Referee in Bankruptcy who denied petitioners' prayer for an extension for several reasons, among which, one reason was that the twelve month period of redemption had expired and there was no contractual relation between the debtor and creditor and the petition for extension was not filed within the time contemplated by the statute and that the petitioners had no rights or interests in the property, such rights and interests having ceased at the expiration of the twelve months period of redemption. The Referee in Bankruptcy further stated "no petition for extension could avail in favor of the mortgagor subsequent to the date of such period of redemption." We thus find the Referee overruling the contentions of petitioners that they had a verbal agreement for extension of right of redemption (R. 27). The matter was referred by the Referee on his own motion to the District Court, which Court entered an order approving and confirming the order of the Referee (R. 28) from which order the petitioners appealed to the Circuit Court of Appeals for the Seventh Circuit (R. 2, entry of 8-30-34; R. 28).

The appeal case is found under the title *In Re Wright*, 75 F. (2) 687. The Court under point I of its opinion sets out that the petitioners contended that Logan had made an oral agreement with them for extension of the time for redemption from the mortgage sale. The Court discussed the evidence offered on that point and held that there was no agreement on the part of Logan to extend the time of redemption, affirmed the order of the District Court, and this case has not been reviewed or appealed.

Petitioners on page 14 of their brief, Point I of Argument, endeavor to avoid the holding of the Circuit Court of Appeals. A reading of that decision will indicate that petitioners' attempt is futile because that Court distinctly held that there was no oral extension of the time of redemption.

After filing of the mandate of the Circuit Court of Appeals the petitioners, on April 5, 1935 filed an amended petition asking for an extension of time to pay the debts under the Bankruptcy Act as amended (R. 8). The bankruptcy cause was reinstated. Thereafter on October 9, 1935 petitioners filed an amended debtors' petition again claiming a verbal agreement for extension of redemption period, in disregard of the decision of the Circuit Court of Appeals (R. 19). The petitioners then took a side excursion into the Illinois courts, and filed a bill in equity in Edgar County, Illinois alleging such oral agreement and praying for a decree extending the period of redemption. The Circuit Court of Edgar County held there was no verbal agreement for the extension of the time of redemption and dismissed the petitioners' bill for want of equity.

As we have heretofore indicated, on appeal the Appellate Court held that there was a verbal agreement and remanded the cause with instructions to the Circuit Court of Edgar County to allow petitioners to redeem within a reasonable time.

We have likewise heretofore pointed out petitioners lost all benefit of that ruling by failure to file the mandate of the Appellate Court in the Circuit Court of Edgar County as required by Illinois Revised Statutes, Chapter 110, paragraph 212. Thus we find the decree of the Circuit Court of Edgar County dismissing the plaintiff's bill for want of equity in full force and effect. The result is that we have a decision in the Circuit Court of Appeals and one in the Circuit Court of Edgar County, Illinois, both holding that there was no verbal agreement for an extension of the time within which petitioners might redeem.

It is provided by Section 75(n) of the Bankruptcy Act that in all cases where at the time of filing the petition the period of redemption has not expired, then the period will be extended for a period necessary to carry out the provi-

sions of the statute. The period of redemption of petitioners having expired three months before they filed their original petition, there was nothing to extend and the statute was not operative in the case at issue.

Failure to File Mandate of the Appellate Court in the Circuit Court of Edgar County, Illinois Amounts to an Abandonment of That Suit and a Wiping Out or Cancellation of Any Verbal Extension of the Period of Redemption.

It is provided by Illinois Revised Statutes, Chapter 110, Paragraph 212 (3) as follows:

> "No new trial shall be had by reason of the reversal of any judgment, order or decree, unless the mandate shall be filed in the trial court within one year after final determination by the reviewing court."

The opinion of the Appellate Court in the case of *Logan* v. *Wright*, 288 Ill. App. 481 was dated January 15, 1937. Duty rested upon petitioners to file the mandate in the Circuit Court of Edgar County on or before January 15, 1938. Such mandate has never been filed in the Edgar County Circuit Court (R. 37).

The Circuit Court of Edgar County had dismissed the bill of petitioners for want of equity thereby holding that there was no verbal extension of the period of redemption. In its opinion the Appellate Court said that this decree would be reversed and the cause remanded with directions that the Court ascertain the amounts due from the plaintiffs to the defendants; that the plaintiffs be permitted to redeem within a reasonable time to be fixed by the Court. The Appellate Court did not fix any time and there was therefore a new hearing required by the Circuit Court to carry out the opinion of the Appellate Court.

The law of Illinois is now that the mandate must be filed within one year. Prior to January 1, 1934 the law of

Illinois was that a mandate had to be filed within two years (Section 141 of the Practice Act of 1907—Hurd's Illinois Statutes of 1919, page 2296).

In the case of *Town of Anchor* v. *Stewart,* 270 Ill. 57 the Circuit Court of McLean County, Illinois, entered a decree enjoining appellants from constructing a switch from the Illinois Central railroad across East street, in the town of Anchor and a strip of ground one hundred feet west of East street which was alleged to be a public alley, to the public warehouse of the appellant, Daniel B. Stewart, east of East Street. From that decree an appeal was taken to the Supreme Court of Illinois, which court reversed the decree and remanded the cause with directions to dissolve the injunction and dismiss the bill so far as the alleged alley was concerned, and affirmed as to East Street. The mandate from the Supreme Court of Illinois was never filed in the Circuit Court of McLean County.

The Illinois Central Railroad Company filed a petition with the Public Utilities Commission for permission to construct a side-track across the public highway known as East Street, in Anchor township, unincorporated. The highway commissioner of Anchor township, who was made a party to this proceeding, filed an answer in which, among other defenses, he set out the proceedings in the injunction suit in the Circuit Court of McLean County, and urged that decree as an estoppel. The Public Utilities Commission overruled this and the other defenses and entered an order granting the Illinois Central Railroad Company the right to construct a switch or spur-track across the highway known as East Street in the Town of Anchor, in McLean County, Illinois. An appeal was taken to the Circuit Court of Sangamon County, Illinois, where the order of the Utilities Commission was affirmed. An appeal was prosecuted to the Supreme Court of Illinois.

The case is reported as *Public Utilities Commission* v.

Smith, 298 Ill. 151. It was urged in that court that the finding of the Utilities Commission was in conflict with the decree rendered in the Circuit Court of McLean County in *Town of Anchor* v. *Stewart*, 270 Ill. 57. The court discussed other matters, and as to this contention said:

> "It would appear, also, that there is another reason why the judgment of the circuit court in the injunction case would not be binding here. While it is true that everything filed of record in the circuit court and Supreme Court in that case is binding upon the parties in that case as an estoppel, the failure to file the remanding order within two years operated as an abandonment of the suit and a wiping out or cancellation of the injunction under the provisions of section 114 of the practice act of this State. (Hurd's Stat. 1919, p. 2296.) It appears from the record and briefs in this proceeding that the transcript of the judgment in the injunction proceedings has never been filed in the circuit court of McLean County, and therefore, under the reasoning of this court in construing said statute, that judgment no longer affects or binds the actual parties thereto."

Under the authority of that decision the failure of petitioners to file the mandate or remanding order of the Appellate Court within one year, as now required by Illinois Statute, operated as an abandonment of the suit and a wiping out or cancellation of the alleged verbal extension of the period of redemption.

The same question was considered in an earlier case in Illinois entitled *Austin* v. *Dufour*, 110 Ill. 85. In that case the Court said:

> "It is very clear that by the 84th Section of the Practice Act, if either party desires to prosecute a case further, where there has been a reversal and remanding order by an Appellate tribunal, he must file a transcript of the reversal and remanding order in the trial court within two years from the date of such remanding order, and if this is not done, the cause will be abandoned."

A very early case in Illinois is *Heath* v. *Jones*, 12 Ill. App. 493. In that case the plaintiff appealed a case to the Appellate Court and secured in that Court a reversal of the judgment of the trial court. Through neglect, his attorney did not file the transcript of the judgment of reversal in the lower court until three days after the lapse of the two years provided by the statute. Plaintiff then went into equity to establish his rights and the court held that equity would not give him any relief.

Throughout petitioners' brief, the assertion is made that petitioners' right of redemption had not expired when they filed their original suit in equity on May 3, 1934 (R. 2) because of the verbal extension of that period of redemption. We also point out to the court that petitioners' amended pleading to come within Section 75(S) of the Bankruptcy Act was not tendered until March 2, 1940 (R. 47), although petitioners' equity of redemption expired on February 3, 1934.

Under the statute and decisions of the Supreme Court of Illinois the failure to file the remanding order, or mandate, operated as an abandonment of the suit and a wiping out or cancellation of any alleged verbal agreement for an extension for the period of redemption. That verbal right having been wiped out or cancelled by the failure to file the mandate of the Appellate Court, it follows that when petitioners filed their petition they had no equity of redemption or any other right, title or interest in the property, all such rights having expired three months before they filed their original petition.

IV.

The Master's Deed Is Valid.

Respondents' ancestor held the Certificate of Sale issued by the Master in Chancery of Edgar County dated February 3, 1933 (R. 27). Petitioner's right to redeem expired on February 3, 1934. Creditors had an additional three months within which to redeem. The holder of the certificate would have been entitled to a Master's Deed on May 4, 1934 (Ill. Rev. St., Ch. 77, Par. 31).

Petitioners filed their original petition in bankruptcy on May 3, 1934 (R. 2) and on the same day the District Court entered an order providing: "each and all of the creditors, their agents, attorneys, and all persons acting by, through, under or on their behalf, are hereby restrained and enjoined from taking any further steps or proceedings of any kind or character whatsoever toward enforcing any obligation against said debtors, until the further order of this court" (R. 7).

That injunction remained in full force for one year and one week, being dissolved by the District Court on June 11, 1935 (R. 17). Petitioners preserved an exception to the order of dissolution and prayed an appeal which was allowed upon filing bond for costs in the sum of Two Hundred ($200) Dollars (R. 17; 3-entry of "6-11-35"). This appeal was not prosecuted and the appeal bond was never filed.

Subsequently, on July 27, 1935, respondents' ancestor, W. S. Logan, presented his Certificate and secured a Master's Deed to the premises (R. 37).

Petitioners moved for a restraining order against mortgagee and other creditors on February 29, 1936 (R. 3) but abandoned this motion and never asked for a hearing on it (R. 37).

The deed held by respondents was retained in their possession under order of the court directing that it be not recorded or given any effect until the court should so direct (R. 39—top of page). This order was revoked and the deed given full force and effect by order of the District Court on March 5, 1940 (R. 48).

Petitioners contend that that deed is not good (Petitioners' Brief, page 23), and rest their contention on *Kalb* v. *Feuerstein*, 308 U. S. 433.

We submit that it is valid under authority of *Bernards* v. *Johnson*, 86 L. Ed. 14, 21 (Decided November 10, 1941). In that case bankruptcy proceedings were instituted on August 10, 1934. This Court held Sub-Section (S) unconstitutional on May 27, 1935. Subsequently on August 26, 1935 foreclosure sale was had in the State court and confirmed on September 16, 1935. New Sub-Section (S) was adopted by Congress on August 28, 1935. The restraining order issued against the Sheriff was dissolved on December 18, 1935 for the reason that the property had been sold by the State court when it had jurisdiction. No appeal was taken. The contentions of the parties and the holding of this Court are found in the following quotation from the opinion:

> "The petitioners urge that the automatic stay imposed by sub-section (o), and the extension of the period of redemption created by sub-section (n), continued throughout the case and that all action taken in the state court was, therefore, void under the doctrine announced in *Kalb* v. *Feuerstein*, 308 U. S. 433, 84 L. ed. 370, 60 S. Ct. 343, 41 Am. Bankr. Rep. (N. S.) 501, *supra*. The respondents insist that, in order to continue the extension and have the benefit of the stay after the conclusion of the conciliation proceedings and the adjudication in bankruptcy, timely application to the bankruptcy court to that end had to be made by the petitioners. We find it unnecessary to discuss or decide the important question thus mooted, for the reason that the orders and decrees entered by

the bankruptcy court, if valid, relieved the respondents, as mortgagees, of any disability to pursue their foreclosure suits arising out of the pendency of the bankruptcy proceeding and left them free to prosecute the foreclosures in the state courts. However erroneous the challenged orders, the remedy for their correction was by timely application for review or timely appeal."

The contentions made in that case are exactly the same as the ones made by petitioners here.

The injunction in this case was dissolved on June 11, 1935 (R. 17) and petitioners prayed an appeal, but abandoned it and did not prosecute the appeal.

At the time the Master's Deed was issued there was no injunction. The dissolution of the injunction relieved respondents, as mortgagees, of any disability to pursue their foreclosure suit in the State court. The remedy for the correction of this dissolution order was by timely appeal, which was prayed and allowed, but abandoned by petitioners. They are now in no position to complain.

V.

The Narrow Question.

Petitioners on page 20 of their brief set out what they would like the Court to believe is the narrow question. They state that the Court kept the petitioner proceeding under Section 75 (a) to (r) and then declined to let the petitioner have the advantage of Section 75 (S) of the Bankruptcy Act. We do not concede that this is the narrow question. On the contrary we vigorously affirm that it is not the question in the case. If the case be resolved into one question, it would be:

When the period of redemption in foreclosure proceedings has expired, does the Bankruptcy Court have jurisdic-

tion to entertain debtor's petition under Section 75 of the Bankruptcy Act?

We submit the answer to that question is No and have fully presented it under Point I of our Argument. We, therefore, shall not repeat what we have there said, but trust the Court will give careful consideration to that Point in our Argument.

The Bankruptcy Court Did Not Keep the Proceeding Under Section 75 (a) to (r).

Petitioners complain as we have just above indicated and also on page 18 of their brief that the Bankruptcy Court forced the petitioners to remain under Section 75 (a) to (r). The facts as we view them do not sustain this contention. Let us briefly examine the Record to ascertain the real causes of the unusual delays.

1. The decree of foreclosure was entered on December 17, 1932 (R. 26; 36). Petitioners permitted their period of redemption of one year under the Illinois Statute to expire and delayed another three months before filing their original petition in bankruptcy (R. 7). A delay on the part of petitioners of one year and three months.

2. After an adverse ruling from the Referee in Bankruptcy petitioners had the case reviewed by the District Judge, who on August 30, 1934, confirmed the Referee's report denying the petition (R. 2; 28). Petitioners appealed to the Circuit Court of Appeals, which affirmed the District Court, and mandate was filed on March 29, 1935 (R. 2). Another delay of seven months caused by petitioners.

3. Petitioners then diverted their activities into the State Courts of Illinois and filed a suit in the Circuit Court of Edgar County, Illinois, took an appeal to the Supreme Court of Illinois, which referred the cause to the Appellate

Court of Illinois for the Third District in which an opinion was rendered on January 15, 1937 (R. 28). Another delay of one year and nine months caused by petitioners resorting to the State Courts after an adverse decision in the Circuit Court of Appeals.

4. Under the Statutes of Illinois (Ill. Revised Statutes, Ch. 110, Paragraph 212) petitioners had one year in which to file mandate of the Appellate Court in the Circuit Court of Edgar County, Illinois. This petitioners failed to do (R. 37). Another delay of over one year caused by petitioners abandoning the decision of the Appellate Court of Illinois.

5. On September 30, 1935 the District Court entered an order upon petitioners granting them the right to amend their petition to include a prayer for adjudication under new Sub-Section (S) of Section 75 of the Bankruptcy Act as amended within ten days or in the absence of such amendment to show cause why the original petition should not be dismissed (R. 19). A petition to amend their petition in bankruptcy pursuant to the provisions of Section 75-S was filed by petitioners on March 2, 1940 (R. 47). This delay of four years and six months was caused solely by petitioners' failure to obey the order of the Court and was a most unreasonable and unexplained delay.

Examples might be multiplied, but sufficient has been said to demonstrate that any clogging of the normal progress of the proceedings has been due to acts and unreasonable, unexplained delays and temporizing on the part of petitioners.

The Borchard and Wright Cases Compared.

Petitioners assert that these two cases are identical (Petitioner's brief, pages 21-23). Here, again, they persist in ignoring the question involved, namely, that in the Wright case, the period of redemption had expired before

petitioners filed their original petition in bankruptcy. This is fully set forth under Point I and III of our Argument.

That was not the case in *Borchard* v. *California Bank*, 310 U. S. 311, 84 L. Ed. 1222. In that case the mortgage was given on January 30, 1934. Debtors filed their petition under Section 75 of the Bankruptcy Act on November 17, 1934. The respondent bank declared default of the mortgage in January 1935, some two months after the bankruptcy petition had been filed. It is obvious that at the time of filing the petition the debtors had title in the premises subject to the mortgage, and that the equity of redemption had not begun to run.

It is equally obvious that when the Wrights filed their petition they had no right, title or interest in the premises, but had lost all their rights by permitting their right of redemption to expire without making redemption.

In the Borchard case the statute took effect because the period of redemption had not run.

In the Wright case the statute could not take effect because the period of redemption had expired prior to the filing of the petition in bankruptcy.

On the real issue involved there is no similarity between the two cases.

VI.

Debtors Must Amend Their Petition Asking To Be Adjudged a Bankrupt Under Section 75 S Within a Reasonable Time After the Court Has Ordered Them To Do So.

The Statute providing that a farmer-debtor may be adjudged a bankrupt under Section 75(S), provides no time within which that action must be taken. When no time is indicated, it is the law that the action must be taken within a reasonable time.

As has been before indicated, the petitioners were ordered to amend the petition on September 30, 1935 within ten days thereafter (R. 19). This order was entered two days after the Conciliation Commissioner reported that petitioners and their creditors were unable to agree (R. 18). Petition under Sub-Section (s) was never tendered until March 2, 1940, five years after the entry of the above mentioned order. We submit that this was more than a reasonable time. The Court below construed the statute to provide that a reasonable time is allowed to enable the debtor to affect a composition with his creditors or failing that, to apply to the Court for adjudication in bankruptcy, saying that this remedial statute imposes upon the debtor a corresponding duty to move expeditiously in order to avail himself of its benefits. The Court cites in support of its holding *In Re Price,* 99 F. (2) 691; *In Re Pate,* 99 F. (2) 694, and *Buttars* v. *Utah Corp.,* 116 F. (2) 622. The Ninth Circuit has held to the contrary in *Cohan* v. *Elder,* 118 F. (2) 850.

This Court in *Wright* v. *Union Central Life Insurance Company,* 85 L. Ed. 166 decided December 9, 1940, applied the rule of a reasonable time to Paragraph 75 (s) (3). That section provides that after property has been re-appraised, the debtor shall have the right to redeem at the re-appraised value or at the value fixed by the Court. No time is indicated within which this redemption may be made. In that case the farmer-debtor filed a cross petition for leave so to redeem. This Court said (emphasis ours):

> "We hold that the debtor's cross petition should have been granted; that he was entitled to have the property reappraised or the value fixed at a hearing; that the value having been determined at a hearing in conformity with his request, he was then entitled to have *a reasonable time,* fixed by the court, in which to redeem at that value; and that if he did so redeem, the land should be turned over to him free and clear of encumbrances and his discharge granted. Only in

case the debtor failed to redeem *within a reasonable time* would the court be authorized to order a public sale."

Why should not the same rule be applied to the farmer-debtor requiring him to file his petition under Sub-Section (S) within a reasonable time after he has failed to agree on a composition with his creditors?

We submit that the situations are so similar that the same rule should be applied.

In reply to petitioners' remarks about the reasonable time theory (Plaintiff's brief, pages 27 to 30) we submit that no further reply is needed than to point out that his Court has adopted that rule by applying it to one of the sections of paragraph 75 of the Bankruptcy Act.

VII.

The Decision Below Is Not Contrary to the General Tenor of Federal Decisions.

Petitioners contend to the contrary on pages 32 to 34 of their brief. The first case cited by them as being in conflict is *John Hancock Mutual Life Insurance Company* v. *Bartels*, 308 U. S. 180, 84 L. Ed. 176. In that case the respondent Bartels presented his petition to the District Court on December 2, 1937 asking that he be afforded an opportunity to effect a composition or extension of time to pay his debts under paragraph 75. The Court referred the matter to a Conciliation Commissioner. Debtor was unable to compromise with his creditors and on January 10, 1938 filed application to be adjudged a bankrupt under Sub-Section (S). On March 23, 1938 the John Hancock Company moved to set aside the adjudication and dismiss debtors' petition on the ground that he had no hope of rehabilitation.

It will be noted that no foreclosure proceeding was ever instituted by the *John Hancock Company* v. *Bartels*. Bartels owned the property subject to the mortgage and no redemption period had expired or even begun to run. This case is not in conflict because in the Wright case under consideration petitioners had lost all right in the property by permitting their right of redemption to expire prior to filing their petition in bankruptcy.

The next case cited as being in conflict *Borchard* v. *California*, 310 U. S. 311. We have heretofore discussed and pointed out the difference between this case and the case under consideration in Point V of this brief (Page 32).

The third case cited is *Kalb* v. *Feuerstein*, 308 U. S. 433, 84 L. Ed. 370. In that case foreclosure proceedings were begun on March 7, 1933 and judgment of foreclosure was entered April 21, 1933. The Sheriff sold the property under this judgment July 20, 1935. Mortgagor filed a petition under Section 75 of the Bankruptcy Act and while foreclosure was pending and on September 16, 1935 the State Court confirmed the Sheriff's sale. It will be noted that the farmer-debtor had filed his petition under Section 75 (S) before the mortgage sale had been confirmed by the Court. The period of redemption had not even started to run.

Reference may be made to the case of *Wright* v. *Union Central Life Insurance Company*, 85 L. Ed. 166. The Court in that case says that the same land is involved as in the same case reported in 304 U. S. 502. From the facts as reported there it appears that suit to foreclose a mortgage was started on January 3, 1934, judgment of foreclosure entered on June 3, 1934, sale had on July 12, 1934 and the debtor filed his petition under paragraph 75 on October 29, 1934. The one year period of redemption provided for by the Indiana Statute (Indiana Annotated Statutes Burns 1933 Edition, Paragraph 2-3909, 2-4001) made

the redemption period expire on July 12, 1935. The debtor filed his petition in bankruptcy prior to the expiration of his period of redemption.

Petitioner cites a number of other cases which we shall comment on as briefly as possible to present the facts.

In *Federal Land Bank* v. *Hansen*, 109 F. (2) 139 (C. C. A. 2nd) it appears that the debtor filed her petition under Section 75 on May 9, 1938. On January 27, 1939 Federal Land Bank moved to dismiss the proceedings which order was denied. No foreclosure decree had ever been entered and no period of redemption had expired.

In *McCook* v. *Federal Land Bank*, 108 F. (2) 185 (C. C. A. 5th) the farmer filed a petition under Section 75 and subsequently the creditors moved to dismiss the proceedings. No foreclosure suit had ever been filed and no period of redemption had expired.

In *Ellis* v. *Connecticut Mutual Life Insurance Company*, 111 F. (2) 896 (C. C. A. 6th) the facts are not stated in the opinion but the appellee confesssed error in the judgment and consented that the same should be reversed. It is undoubtedly the case that the period of redemption had not expired or else such a confession of error would not have been made.

In *Trego* v. *Wright*, 111 F. (2) 990 (C. C. A. 6th) the facts show that foreclosure proceedings were instituted and sale had on July 21, 1934. Five days prior to the sale, mortgagor filed a motion in the State Court and an order was entered thereon restraining foreclosure proceedings until February 1, 1935. On January 26, 1935 mortgagor filed his petition as a farmer-debtor in the Federal Court under the provisions of paragraph 75 of the Bankruptcy Act. On February 11, 1935 the foreclosure sale was confirmed by the State Court.

It will be observed that the farmer debtor filed his petition prior to the confirmation of the sale in the State

Court. The redemption period therefore could not have expired.

Schreiver v. *Oxford*, 116 F. (2) 684 (C. C. A. 6th), *Zumkehr* v. *Steinman*, 108 F. (2) 448 (C. C. A. 7th), and *Peterson* v. *John Hancock Mutual Life Insurance Company*, 116 F. (2) 148 (C. C. A. 8th), are all cases in which the foreclosure suit was pending when the debtors filed their petition under paragraph 75 of the Bankruptcy Act, and in none of these cases had a period of redemption ever begun to run at the time the petitions were filed. They differ from the case at bar because here the equity of redemption had expired three months before the petitioners filed their original petition in bankruptcy.

Cohan v. *Elder*, 112 F. (2) 967 (C. C. A. 9th) and the same case in 118 F. (2) 850 (C. C. A. 9th), is a case in which the petition was filed under Section 75 prior to the sale under a trust deed. The period of redemption had never started to run when the petition was filed.

In *Paradise Land Co.* v. *Federal Land Bank*, 108 F. (2) 832 (C. C. A. 10th), the debtors filed his petition under Section 75 of the Bankruptcy Act prior to the institution of any foreclosure suit.

All the remaining cases cited by petitioners on pages 33 and 34 are in various District Courts. In each of them the petition under Section 75 of the Bankruptcy Act was filed prior to the expiration of the period of redemption. In petitioners' brief on page 34 under paragraph 5 and again in the conclusion, reference is again made to the case of *Cohan* v. *Elder*, 118 F. (2) 850 (C. C. A. 9th). As we have heretofore pointed out in this case the petition in bankruptcy was filed prior to sale under a trust deed. No period of redemption had started to run.

On pages 25 and 26 of petitioners' brief other cases are cited. *In Re Price*, 99 F. (2) 691 (C. C. A. 7th), foreclosure suit was entered on September 3, 1935, and fore-

closure sale was held on October 8, 1935. Petition in bankruptcy under Section 75 was filed by the farmer-debtors on September 1, 1936 within the statutory redemption period of twelve months. It, therefore, follows that the period for the equity of redemption had not expired.

In Re Pate, 99 F. (2) 694 (C. C. A. 7th), is a case in which the petition in bankruptcy was filed three days before the date fixed for the sale of the mortgaged premises under foreclosure decree. Redemption period starts to run at the date of sale and therefore in this case the period of redemption had not started to run when the petition was filed. We are unable to locate citation *In Re Monjon*, 11 F. (2) 535. There is no such case reported at the citation given.

From these brief statements it will be observed that there is not a single case cited by petitioners in which the farmer-debtor permitted his period of redemption to expire before filing his petition in bankruptcy.

Under paragraph I of our Argument we have referred to the statute and presented cases which uniformly hold that when the period of redemption has expired, the Bankruptcy Court has no jurisdiction to entertain debtors' petition under Section 75 of the Bankruptcy Act.

Judicial Amendments to the Farmer-Debtor Statute.

Under this heading beginning on page 25 of petitioners' brief an unwarranted attack is made upon the Circuit Court of Appeals of the Seventh Circuit.

The points raised have nothing to do with the issue involved in this case excepting the remarks about the Wright case. In those comments petitioners again seize upon certain remarks of the lower courts and disregard entirely the fact that both courts base their decision on the ground that petitioners had failed to file their petition in bankruptcy prior to the expiration of their period of redem-

tion. We have heretofore fully discussed this proposition in our brief and repetition would be of no avail.

On page 30 of petitioners' brief under the heading of "'The Practical Importance of the Questions Submitted" an argument is presented based upon facts, none of which are found in the record.

Such argument does not warrant reply, but we may suggest to the court that many people who in good faith have loaned money to farmers are unable to understand why, when a farmer has lost all his right in the property by his own actions, any court would countenance approving his conduct in attempting to still retain the property.

Again on page 31 under the heading "A Last Refuge" further argument is presented not based upon any evidence in this case. In this case before the Court there is no extensive legal staff of large corporate mortgage holders. The respondents are ordinarily citizens who have found themselves thus far unable to collect a debt fully due to them.

The petitioners are the ones in this case who have had the benefit of the services of two counsel who hold themselves out as experts in the field of law involved.

Counsel for petitioners are not experts, but only general practitioners.

Every citizen knows that the Supreme Court of the United States is the last resort for legal questions arising under federal law. That Court is a refuge likewise for persons who have invested their moneys, who are willing to follow the law, but who have the right to insist upon the law being properly followed by the other parties as well as by themselves.

Respondents simply ask that the law found in the statute and the decisions be applied to the facts in this case.

Conclusion.

The decisions of the Circuit Court of Appeals and the District Court are in accord with the provisions of the applicable statute and the unanimous decisions of all courts that have passed upon the issue involved.

A court of Bankruptcy has no jurisdiction under Section 75 (a-s) of the Bankruptcy Act where the debtor's period of redemption had expired before the petition in bankruptcy was filed.

This was the cornerstone in the decisions of the Referee in Bankruptcy, the District Court and the Circuit Court of Appeals.

Diligent search has failed to reveal a single case in which jurisdiction was taken where the petition was filed subsequent to the expiration of the redemption period.

In the case under consideration the period of redemption of petitioners, under the Illinois law, expired on February 3, 1934. Their original petition in bankruptcy was filed three months after the expiration of the redemption period on May 3, 1934, at a time when petitioners had no right, title or interest in the premises.

An application of the statute and prior decisions to this state of facts can bring but one result—the affirming of the decisions below.

Respectfully submitted,

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APPENDIX.

Opinion of District Court of March 11, 1939, Record—Pages 36 to 40.

Order Upon Petition of W. S. Logan, et. al.

The debtors in this case are Elizabeth Wright and her husband. In November, 1932, W. S. Logan, the testate of petitioners, now deceased, a mortgagee, obtained a decree of foreclosure and sale upon forty acres of land belonging to Mrs. Wright for $3822.12 and costs. Pursuant to the decree, the property was sold by the master-in-chancery, on the 3rd day of February, 1933, at which time there was due the mortgagee $4101.52, to the latter for $3801.52, leaving a deficit of $300 for which judgment was entered against the debtors. Certificate of purchase duly issued.

Under the statute of Illinois, the mortgagors had twelve months and their creditors fifteen months within which to redeem. No redemption was made. On the last day before the expiration of the fifteen months period and almost three months after the debtors' right to redeem had expired, the latter filed their petition in this court under Section 74 of the Bankruptcy Act as amended, seeking an agreement for extension or composition as provided by the act. The referee, to whom the cause was referred, found that the mortgagors had no interest in this property at the time they filed their petition and that, therefore, there could be no valid proceedings for composition or extension, so far as the land involved was concerned. Upon review, this court approved his order and was affirmed by the United States Circuit Court of Appeals in *Wright* v. *Logan*, 75 Fed. (2) 685. In accord with the mandate of that court, the order of this court remains in full force and effect.

Upon expiration of the period of redemption of fifteen months, the master-in-chancery executed and delivered to Logan a deed for the real estate.

The debtors filed suit in the state court, seeking a decree allowing them to redeem despite expiration of the period of redemption. They were defeated in the trial court but the decree was reversed by the Appellate Court, which directed that the relief be granted and that the plaintiffs be permitted to redeem within a reasonable time to be fixed by the *nisi prius* court. *Wright* v. *Logan*, 288 Ill. App. 481.

Paragraph 216 of Chapter 110 of the Illinois Statutes provides that no new trial shall be had by reason of the reversal of any judgment, order or decree, unless the mandate shall be filed in the trial court within one year after final determination by the court of review. No mandate was filed in the trial court within one year of the date of the final determination of the reviewing court.

After the affirmance by the Court of Appeals and after its mandate had been filed in this court, the debtors, on April 5, 1935, filed an amended petition under Section 75 of the Bankruptcy Act as amended, asking for extension of time to pay their debts. The petition was referred to the conciliation commissioner. At that time debtors moved for a restraining order against the mortgagee and other creditors. No hearing was had upon this motion. The mortgagee having died, petitioners as devisees under his will are now the owners of all interest of the mortgagee by virtue of the premises aforesaid. No composition or extension agreement has been accepted by a majority of the creditors and filed with the conciliation commissioner, but the debtors have remained in possession of the land and enjoyed its fruit and product at all times since default was made in the payment of interest upon the mortgage prior to 1932.

The receiver of the state court collected rent from the debtors for a time but for the last four years no substantial

amounts have been paid to the mortgagee, the conciliation commissioner of others by way of rent as required by the Frazier-Lemke Act. Thus, for all practical purposes the debtors have enjoyed a moratorium of seven years and for more than three years last past without payment of any substantial rent.

Mrs. Wright owns, in addition to the forty acres, a life estate in seventy acres which is good productive land. This is unincumbered except for the judgments hereafter mentioned. At the time she filed her schedules, she owed in addition to what was due the mortgagee some $4300 represented by judgments in the Circuit Court of Paris, Illinois, and $1278 to creditors who were unsecured. She testified that she has since reduced the judgment creditors' indebtedness by approximately $1000; that one judgment creditor holding judgment for $1164.26, is in bankruptcy that she believes that she can adjust the latter for $500; that she has since paid to unsecured creditors some $545; that of the unsecured creditors $300 in the form of a rental note to the mortgagee will be satisfied by satisfaction of the mortgage indebtedness.

The debtors conduct a dairy and farm the land, raising the ordinary farm crops on all portions of both the forty acres and the seventy acres, other than that necessary for pasturage and the lots where the home property which consists of a house of about eight rooms, a barn and some small buildings, is located. They retail milk to consumers and sell some in larger lots to merchants for retail. They have a tractor which was purchased in the last two years, an old one being traded in credit on the purchase price, some cash having been paid and the balance remaining due on the conditional sales contract.

On the undisputed evidence the land is fairly worth $5000. The total indebtedness represented by the decree of foreclosure, deficiency judgment and the interest and taxes, less such credits as have been paid, is $5560.72. The debtor

at one time had arranged to borrow for refinancing purposes from the Federal Land Bank $5000 and from one of its associated affiliates, an additional sum of $1000. She had hoped to procure with this $6000 a satisfaction of the mortgage indebtedness and of the larger part of the judgment debts. She says she had an arrangement for the subordination of any judgment lien the owner of which would not accept a reduction. Apparently nothing has been done along this line for many months.

The debtors are not in very creditable position with regard to the mortgage indebtedness. They have not been diligent. They have made no redemption, although the state court has provided that they might do so. They have failed to comply with the federal act by paying the usual and customary rental. In the meantime, the mortgage indebtedness has increased. The deed held by the mortgagees has been retained in their possession under order of this court directing that it shall not be recorded or given any effect until and unless this court shall so direct. Seven years have passed since entry of the decree of foreclosure and it is obvious that the creditors have been most reasonable in permitting such a period to elapse without realization of tangible results from the mortgage owned by them. On the other hand the debtors have made some progress in the payment of other indebtedness. Apparently they are industrious and thrifty. I desire to save any equity they may have. It would seem that there is no equity in the forty acres, but when it is considered in connection with the seventy acre life estate, the debtors might possible work out a satisfaction not only of the mortgage but of their other debts so that, there then being no liens against the life estate, they would have a means of livelihood.

The petitioners have a deed to which the court may at any time give full force and effect. Consequently it is unnecessary to have another sale. But in case this court found it necessary to order a sale, there would be a period

of redemption of ninety days. Consequently it seems to be only equitable that the debtors should enjoy the same period of time they would have if the property should be sold, within which to make redemption. It would require about thirty days to make a sale and the act allows ninety days for redemption. Accordingly, it is the order of the court that the jurisdiction of this court over the deed held by petitioners and over petitioners be and the same is hereby retained; that the debtors remain in possession and custody of the property, upon condition that they at once pay a reasonable rental for the use of the land during the farming season of 1938 and arrange to pay a reasonable rental for the present season to the conciliation commissioner. Obviously any rental paid will be credited upon the total amount of the mortgage indebtedness which will thereby be proportionately reduced. This matter will be continued for a period of 120 days from this date. During that time debtors shall have every opportunity to redeem from the mortgage sale and to make any and all possible adjustment and composition with their creditors. In other words, their rehabilitation must be completed within 120 days. In the absence of their inability to complete it, the court will at the end of said period, give full force and effect to the deed held by petitioners. The conciliation commissioner will act in accord with this order.

Entered this 11th day of March, A. D. 1939.

WALTER C. LINDLEY,
Judge.

Endorsed: In Bankruptcy No. 2414-D Elizabeth Wright and Charles C. Wright, Debtors. Order Upon Petition of W. S. Logan, *et al.* Filed and Entered Mar. 11, 1939. D. H. Reed, Clerk.

OPINION OF THE DISTRICT COURT OF JANUARY 12, 1940, RECORD—PAGE 44.

In accordance with the former order entered herein in January 6, A. D. 1940, and after due notice to all parties in interest, a final hearing was had on this 12th day of January, 1940, at nine o'clock A. M.; the debtors, Elizabeth Wright and Charles C. Wright, appeared by Leo Burke, their attorneys, and Elizabeth Wright appeared in person; and the petitioners appearing by Jones, Grant and Sebat, their attorneys. The debtor, Elizabeth Wright, was sworn and examined in open Court. Also the Conciliation Commissioner, James A. Solon, in accordance with order of January 6, 1940, filed his current report to date.

After hearing the testimony, and the arguments of attorneys, and the Court being fully advised in the premises, it is ordered that the prayer of the original petition should be granted.

It is Therefore, Ordered that the possession of the premises described in said original petition, be surrendered and restored to petitioners, by Elizabeth Wright and Charles Wright, on or before March 1st, 1940, or in the alternative pay to the Clerk of this Court for distribution among petitioners in keeping with the further order of Court, the sum of $5,560.72, plus interest at 5% from March 11, 1939, to the date of payment.

Entered this 12th day of January, A. D. 1940.

WALTER C. LINDLEY,
Judge.

OPINION OF THE DISTRICT COURT OF MARCH 5, 1940,
RECORD—PAGE 48.

The court has at all times treated this proceeding as if it were under 75(S) and has granted to the debtors what is substantially an eight years moratorium, all of which appeared by the orders entered March 11, 1939 and January 12, 1940, both of which are incorporated herein by way of reference.

For the reasons previously stated; because the debtors on January 12, 1940, voluntarily offered to surrender title to and possession of the premises, if they were allowed to remain in possession until March 1, 1940; because I am without right or power to deprive the mortgagees of their rights longer, and because the debtor has enjoyed a moratorium far in excess of that provided by the Bankruptcy Act and has for years been treated as being within and given full enjoyment of all rights under 75(S), it is

Ordered by the Court that the debtors' amended petition tendered herein March 2, 1940, be and the same is hereby denied; that any and all prohibition upon the intervening petitioners from exercising their rights under deed heretofore obtained by them be and the same is hereby removed; that the deed heretofore issued by the master-in-chancery be given full force and effect and that possession of the premises described in the original petition be surrendered immediately to said intervening petitioner, to-wit, Gusta Logan, Harriet Logan Sawyer and Exia Logan Reese, by the debtors Elizabeth Wright and Charles C. Wright, as heretofore provided in the order of January 12, 1940.

It is further ordered that the debtor proceedings herein be and the same are hereby dismissed.

Entered this 5th day of March, A. D. 1940.

WALTER C. LINDLEY,
Judge.

SUPREME COURT OF THE UNITED STATES.

No. 229.—October Term, 1941.

Elizabeth Wright and Charles C. Wright, Petitioners, vs. Gusta Logan, Harriet Logan Sawyer, and Exia Logan Reese.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[February 2, 1942.]

Mr. Justice Black delivered the opinion of the Court.

The petitioners are Illinois farmers. Pursuant to a state court foreclosure decree, forty acres of their farm land were sold to W. S. Logan, the mortgagee. The state court master executed and delivered to Logan a certificate of sale, but a deed was not given at that time. By Illinois statute, mortgagors are given the right to redeem for twelve months after the date of foreclosure sale; and if this right is not exercised, creditors are given a similar right for an additional three months thereafter. Ill. Rev. Stat. (1941) c. 77, §§ 18, 20. On May 3, 1934, a day before the expiration of fifteen months from the sale, the petitioners filed in Federal District Court a petition for extension of time in which to pay their debts, under Section 74 of the Bankruptcy Act. 11 U. S. C. § 202. Prior to that time there had been an oral agreement which the Appellate Court of the Third District of Illinois subsequently (January 15, 1937) held to have the effect of keeping the petitioners' right of redemption alive. 288 Ill. App. 481. The forty acres were included in the petitioners' schedule of assets submitted in the Section 74 proceedings, and Logan was listed as a creditor. The District Court refused to grant the proposed extention, and the Circuit Court of Appeals affirmed. 75 F. 2d 687.

Thereafter, April 5, 1935, the petitioners filed an amendment seeking composition or extension of their indebtedness as authorized by sub-paragraphs (a) to (r) of Section 75 of the Bankruptcy Act. 11 U. S. C. § 203. Finding that the petition was filed in

good faith and was in accordance with the requirements of the Act, the judge referred the matter to a conciliation commissioner. Subsequent efforts to effect a composition or extension having failed, on March 2, 1940, the petitioners filed an amendment alleging this failure and asking that the court adjudicate them bankrupt under 75(s), which provides: "Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition or extension proposal . . . may amend his petition or answer asking to be adjudged a bankrupt."

Although the petitioners' allegations brought them squarely within the language of 75(s), the District Court ordered that the amended petition be denied; that the proceedings be dismissed; that the mortgagee's successors in interest[1] be permitted to exercise rights as owners under the foreclosure; that the deed issued to the mortgagee by the state master in chancery after the bankruptcy proceedings had begun be given full force and effect; and that possession of the forty acres be surrendered to the respondent. The Circuit Court of Appeals affirmed, 119 F. 2d 354, holding that 75 imposes upon farmer debtors duties corresponding to the privileges conferred; that if a farmer debtor fails to prosecute his composition proceedings to a conclusion within a reasonable time, the court can deny him the privilege of adjudication under 75(s); and that although these farmer debtors had filed under other subsections of 75, they had already enjoyed all the benefits to which they would have been entitled under 75(s), and therefore were not entitled to obtain a repetition of those benefits by what the court thought was a mere formal change in their petition. Because of an asserted conflict with *Cohan* v. *Elder*, 118 F. 2d 850, and because of the importance of the issue in farmer debtor cases, we granted certiorari.

Section 75(s) does not by its language condition a farmer's right to adjudication upon the diligence with which he has sought to obtain composition or extension under subsections (a) to (r). It "applies explicitly to a case of a farmer who has failed to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a proposal for a composition or an extension of time to pay his debts." *John Hancock Ins. Co.*

[1] W. S. Logan, the original mortgagee, died while the proceedings were pending. The respondents here are devisees under his will.

v. *Bartels*, 308 U. S. 180, 184. That was the situation of the farmers here. And "the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress . . . lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act." *Wright* v. *Union Central Ins. Co.*, 311 U. S. 273, 279. Farmers cannot be deprived of the benefits of the Act because a court may believe that they have received the equivalent of what it prescribes. Cf. *Borchard* v. *California Bank*, 310 U. S. 311. We think the *Bartels*, *Wright*, and *Borchard* cases control our conclusion here, and that the court below was in error in dismissing the applications for adjudication under 75(s).

In the memorandum accompanying the District Court's order directing the petitioners to surrender possession of the disputed forty acres, there is no discussion of their right to redeem. We therefore treat the order as based on the holding that the petitioners' lack of diligence deprived them of the benefits of 75(s) and that the equivalent of the benefits of 75(s) had already been conferred anyway. Because we consider such a holding erroneous, we find it unnecessary to pass upon other questions discussed by the Circuit Court of Appeals, concerning survival of the petitioners' right to redeem. It is nevertheless appropriate to point out at this time that whatever right of redemption the petitioners had when they first applied for adjudication under 75 continued to be a part of their assets, subject to administration by the bankruptcy court. For 75(n) subjects all of the farmer debtor's assets, specifically including rights of redemption, to the jurisdiction of the bankruptcy court, and provides that "the period of redemption shall be extended . . . for the period necessary for the purpose of carrying out the provisions of this section." 11 U. S. C. (Supp. II) § 203 (amendment of August 28, 1935, 49 Stat. 942). See *Wright* v. *Union Central Ins. Co.*, 304 U. S. 502, 513-516.

The judgment is reversed and the cause remanded to the District Court for proceedings in conformity with this opinion.

Reversed.

Mr. Justice ROBERTS took no part in the consideration or decision of this case.